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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,672	10/20/2003	Steven Tsengas	1035	2623

7590 07/12/2004

Law Offices of John D. Gugliotta, PE, Esq.
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EXAMINER

MILLER, WILLIAM L

ART UNIT PAPER NUMBER

3677

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,672

Applicant(s)

TSENGAS, STEVEN

Examiner

William L. Miller

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,7 and 10-15 is/are rejected.
- 7) ☒ Claim(s) 3-6,8 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure. The form and legal phraseology often used in patent claims, such as "means," should be avoided.

Claim Objections

2. Claims 2, 3, 5, 8, and 9 are objected to because of the following informalities: It is unclear if the "first aperture" and/or the "second aperture" recited in claims 2, 3, and 5 is referencing the "aperture" previously recited in claim 1. It is unclear if the "ribs" recited in claims 8 and 9 are referencing the "ribs" previously recited in claim 1. In claim 8, "said first aperture" lacks antecedent basis. In claim 9, "said second aperture" lacks antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 7, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saad (US#2868254) in view of Burshtain et al. (US#4871093), and further in view of Prause (US#5460299).
5. Regarding claim 1, Saad discloses a dispenser comprising: an enclosed container comprising a top portion 5, a base portion 6, and a central portion 1-4; the top portion including a selectively openable and returnably resilient first aperture 25; and at least one item stored within

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the container, namely granular material, powder, coins, or related objects (col. 1, lines 15-17), wherein the item is capable of being inserted into the container and removed therefrom via the aperture.

6. Although Saad fails to specifically disclose the dispenser is intended to dispense food, Saad does not prohibit the dispenser from dispensing food as Saad broadly discloses in col. 1, lines 15-17, the dispenser can be used to dispense granular material, powder, coins, or related objects. Burshtain discloses a similar dispenser for dispensing powder, sweets (food), or pills (food) (col. 1, lines 15-24). Thus, Burshtain equates powder with sweets and pills, both of which are foods for dispensing purposes. Therefore, as evidenced by Burshtain, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the dispenser of Saad by dispensing food for easy metering thereof as food (sweets and/or pills) and powder are known related objects with respect to the dispenser.

7. Saad fails to disclose a plurality of ribs positioned on the container as claimed by the applicant. Prause discloses a dispenser wherein a plurality of ribs 26 are provided thereon for facilitating the selective opening of an aperture thereof. Therefore, as taught by Prause, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Saad by including a plurality of ribs positioned on the container for facilitating the selective opening of the aperture.

8. Regarding claim 2, the base portion includes a selectively openable and returnably resilient second aperture 12. The first aperture is longer than the second aperture as the first aperture extends the entire length of the top portion (see Fig. 7, col. 3, lines 61-63) and the length of the top portion is greater than the length of the bottom portion. The first aperture provides

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greater ingress of food into the container, while the second aperture provides controlled egress of food from the container.

9. Regarding claim 7, Saad discloses the central portion includes a front wall 1, an opposing rear wall 2, and opposing lateral sides 3 and 4, wherein the central portion tapers from a wide width adjacent the top portion to a narrow width adjacent the base portion.

10. Regarding claim 15, Saad discloses the dispenser being made from elastic plastic which is sufficiently strong to maintain its shape but sufficiently flexible to be deformed by the application of pressure thereto (col. 2, lines 30-35). This elastic plastic is thus by definition a "relatively soft pliable polymeric material".

11. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saad in view of Burshtain et al., in view of Prause, and further in view of Willie (US#4626457).

12. Saad fails to disclose a biased clip as a securing means as claimed by the applicant.

Willie discloses a dispenser including a biased clip 14 as a securing means to facilitate transport of the dispenser. Therefore, as taught by Willie, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Saad to include a biased clip as a securing means to facilitate transport of the dispenser.

13. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saad in view of Burshtain et al., in view of Prause, and further in view of Denko (US#6361210).

14. Saad fails to disclose a tab having an orifice as a securing means as claimed by the applicant. Denko discloses a dispenser 1 including a tab having an orifice 14 as a securing

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means to hang the dispenser. Therefore, as taught by Denko, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Saad to include a tab having an orifice as securing means to hang the dispenser.

15. Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saad in view of Burshtain et al., in view of Prause, and further in view of McMahon (US#5623980).

16. Saad fails to disclose a chain as a securing means as claimed by the applicant. McMahon discloses a dispenser wherein the dispenser can be attached to an article of the user via a chain 30 as shown in Fig. 6. Therefore, as taught by McMahon, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the dispenser of Saad by including a chain as a securing means to facilitate attaching the dispenser to an article of the user.

17. Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saad in view of Burshtain et al., in view of Prause, and further in view of Rodriguez (US#5772090).

18. Saad fails to disclose a hook as a securing means as claimed by the applicant. Rodriguez discloses a dispenser wherein the dispenser can be hung from an article when not in use via a hook 14 as shown in Fig. 5. Therefore, as taught by Rodriguez, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the dispenser of Saad by including a hook as a securing means to facilitate hanging the dispenser from an article when not in use.

Allowable Subject Matter

19. Claims 3-6, 8, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

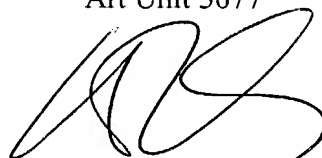
20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is 703 305 3978. The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703 306 4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William L. Miller
Primary Examiner
Art Unit 3677



WLM
07-07-2004